

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CF0391
)	EEOC NO.: 21BA82797
JOSE REYNOZO)	ALS NO.: 09-0593
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee Freeman, and Charles E. Box presiding, upon Jose Reynozo's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CF0391; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On August 11, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged in his charge that Bull Moose Tube Company ("Employer"), indefinitely suspended him on April 11, 2008, because of his ancestry, Hispanic (Count A), and his national origin, Mexico (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On September 23, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On October 16, 2009, the Petitioner timely filed his Request.
2. The Petitioner was initially hired by the Employer on September 4, 1979, as an Assistant Mill Operator.
3. At all relevant times alleged in the Petitioner's charge, the Employer had in place Plant Safety and Conduct Rules ("the Rules"). The Rules designated three (3) categories of offenses: **(a)** minor offenses; **(b)** major offenses, and **(c)** intolerable offenses. Pursuant to the Rules, employees who committed intolerable offenses were subject to termination from employment.
4. On April 11, 2008, one of the Petitioner's co-workers reported to the Employer that he had witnessed the Petitioner commit a violation of the Rules. Specifically, the Petitioner had allegedly placed his hand in a moving mill, which was categorized under the Rules as an

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

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intolerable offense. Further, the Petitioner allegedly threatened this co-worker with retaliation for reporting the Petitioner to the Employer, which was also considered an intolerable offense.

5. Thereafter, also on April 11, 2008, the Employer's plant manager informed the Petitioner, in front of the Petitioner's union representative, that the Petitioner was being suspended for five days with intent to terminate, pending an investigation into the co-worker's allegations.
6. The Respondent determined that the Employer had previously suspended and subsequently discharged non-Hispanic employees of non-Mexican origin for committing intolerable offenses.
7. In his charge, the Petitioner alleged the Employer discharged him because of his Hispanic ancestry and because of his national origin, which is Mexico. In his Request, the Petitioner states he only speaks Spanish, and that he was the only non-English speaking employee at the Respondent on April 11th. The Petitioner further contends that his accuser did not appear at the April 11th meeting between himself, the Employer's plant manager, and the Petitioner's union representative; thus, the Petitioner believes that his accuser provided no evidence the Petitioner had violated the Rules.
8. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge because the Employer articulated a non-discriminatory reason for its conduct, and there was no substantial evidence of pretext.

CONCLUSION

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

As to Counts A & B, the Commission finds there is no substantial evidence that the Employer indefinitely suspended the Petitioner on April 11, 2008, because of either his ancestry or his national origin. While the Commission understands the Petitioner denies having committed any violations of the Rules, whether or not the Petitioner in fact violated the Rules is not the issue. Rather, there must be substantial evidence the Employer's actions were motivated by the Petitioner's ancestry or national origin. No such evidence exists in this case.

In fact, the Employer took adverse action against the Petitioner immediately after one of its other employees informed the Employer that the Petitioner had committed an intolerable offense as defined by the Rules. There has been no evidence submitted to the Commission which suggests the Employer treated the Petitioner differently from similarly situated non-Hispanic employees of non-Mexican origin; rather, the Employer took the same action against the Petitioner as it did against its employees who were outside of the Petitioner's protected classes.

The Employer is entitled to make employment decisions based on its reasonable, good faith belief of the facts surrounding the situation. See Carlin v. Edsal Manufacturing Company, Charge No. 1992CN3428, ALS No. 7321 (May6 1996), *citing* Homes and Board of County Commissioner, Morgan

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County, 26 Ill HRC Rep. 63 (1986). In the absence of any evidence that the business consideration relied upon by the Employer was a pretext for discrimination, it would be improper for the Commission to substitute its judgment for the Employer's business judgment. In this case, there is no substantial evidence the Employer's stated reason for suspending the Petitioner on April 11th was not based on a good faith belief that the Petitioner had committed an intolerable offense in violation of the Rules.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Bull Moose Tube Company as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

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Entered this 12th day of May 2010.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box